IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Chamber Summons No. 11 of 2005
in
Execution Application No.183 of 2004
in
Summary Suit No. 1510 of 2002

M/s G.M.Breweries Limited ..Plaintiff

vs.

1. M /s Siddhivinayak Builders
and another ..Defendants

and

Mrs.Jyotsna Nitin Mehta ..Applicant/
Obstructionist

Mr.J.B.Sen i/b Mr.P.V.Shah for applicant.
Mr.F.Divitre, Sr.Counsel with Mr.Chetan Kapadia
i/b Mr.O.A.Das for plaintiff.

CORAM: A.M.KHANWILKAR J.
29th August, 2005.

P.C.

. Heard Counsel for the parties.

2. At the outset the Counsel for the applicant stated that the applicant was not interested in pursuing the present application and may be permitted to withdraw the application. Counsel for the plaintiff submits that the plaintiff will have no objection for allowing the applicant to withdraw the application but the plaintiff may be permitted to place on record the sur rejoinder sworn by

Mr.S.Swaminathan dated 26th August, 2005 which would explain the correct position about the subject document Exh.A and also to place on record copy of agreement submitted on behalf of the applicant to the society, the xerox copy whereof has also been produced before me. 3. In my opinion, even if the applicant is permitted to withdraw the application and the application is to be dismissed as withdrawn, in view of the prima facie opinion expressed by my predecessor (S.U.Kamdar J.) in order dated 19th January, 2005, the appropriate course will be to take the matter to its logical end. This is so because, the applicant has approached this Court with a specific stand, which is belied by the documents now on record, that under the Articles of agreement dated 26th September, 1993 Exh.A the applicant had 75% share in the disputed property for which reason the said property cannot be made subject matter of the execution of the decree against defendant no.2, who incidentally happens to be her husband. This court in its order dated 19th January, 2005 has recorded a prima facie opinion as to why the document relied upon by the applicant, Exh.A appears to be bogus and fabricated document. It is not necessary for me to repeat the prima facie opinion already expressed by my predecessor, rather I would adopt

the same in the present order. The fact that the applicant has relied upon the fabricated document has been made good by the plaintiff by filing sur rejoinder, which has been taken on record; as also placing on record the xerox copy of the original document which has been executed on 22nd September, 1993 and found on record of the society as was submitted by the Applicant and her husband (Defendant No.2). The said document has been certified by Mr.J.B.Damania, Notary on 4th August, 1994 on the basis of the evidence of the original instrument produced before him. The copy of the said document clearly reveals that the words " as joint tenant in the ratio of 25% share of Mr.Nitin Nagarji Mehta and 75% share of Mrs.Jyotsna Nitin Mehta in the said property" have been inserted in the document which has been produced at Exh.A along with the chamber summons as can be seen on comparison at page 13 in the quoted para. In other words, the clause as appearing in the original document reads thus:

> "AND WHEREAS the Party of the One Party is desirous of allowing the second and third floors of the building to be constructed and used and enjoyed by the party of the Other Part as owner thereof."

Whereas, in the document produced being Exh.A at page 13 the same reads thus:

> "AND WHEREAS the Party of the One Part is desirous of allowing the second and third floors of the building to be constructed and used and enjoyed by the Party of the Other Part as owner thereof as Joint tenant in the ratio of 25% share of Mr.Nitin Nagarji Mehta and 75% Share of Mrs.Jyotsna Nitin Mehta in the said property."

(Emphasis supplied)

The applicant has not produced the original copy of the agreement so far inspite of the observations made by this Court in its order dated 19th January, 2005; nor the applicant has chosen to explain the circumstances about the offending document placed on record. On the other hand, relying on this offending document (Exh.A), the applicant asserts in the present proceedings that she has 75% share in the disputed property which, therefore, cannot be proceeded with. If it is so, it is clearly a case covered by Chapter XI of the Indian Penal Code and will have to be proceeded against by directing

the Prothonotary and Sr.Master of this Court to register a complaint in writing to the appropriate Court for such criminal offence.

4. Counsel for the applicant submits that if the alleged document is fabricated and forged and has been used in the present proceedings then he has no submissions to offer but would still pray that this Court may give opportunity to the applicant to explain the relevant circumstances before passing the final order. I see no propriety in taking recourse to this option because the issue was contested at length before this Court on 19th January, 2005. The applicant, even now, has not bothered or willing to produce the original document or explain the circumstances in which the offending document has been produced on record at Exh.A to support the stand taken on affidavit in the present application on behalf of the applicant. The applicant was expected to explain the circumstances in respect of which prima facie opinion was expressed by this Court in order dated 19th January, 2005. That has not been done. Whereas in the sur rejoinder affidavit filed before this Court by the plaintiff; and the xerox copy of the original agreement made available to the society by the applicant as has been produced

before me, clearly belies the stand taken by the applicant.

5. In such circumstances, the appropriate course is to direct the Prothonotary and Sr.Master to register a complaint in writing in the court of competent jurisdiction against the applicant for having indulged in the act of commission and omission which amounts to offence, inter alia, under the provisions of Chapter XI of Indian Penal Code. In as much as, the applicant is not only directly or indirectly responsible for fabrication of the document in question but also for using such fabricated document in the proceedings before this Court knowing it to be false and also for falsely asserting on affidavit that she had 75% share in the property relying on the bogus and fabricated document. This order is passed keeping in mind the provisions of section 195 of Code of Criminal Procedure.

6. Besides, I find substance in the submission canvassed on behalf of the plaintiff that in addition to the criminal action against the applicant, the applicant should be called upon to show cause why contempt action should not be initiated against her for having filed forged and

fabricated document and to refer to and rely upon the said documents to take a stand on affidavit which was false to the knowledge of the applicant. Indeed, it is well established that both actions are independent and can proceed simultaneously. In the circumstances, in exercise of powers under Article 215 of the Constitution of India and the provisions of Contempt of Courts Act, I direct the office to issue show cause notice to the applicant to show cause why contempt action should not be initiated against her for having filed the fabricated document in this Court and taking a plea on affidavit which was false to the knowledge of the applicant. The said show cause notice be made returnable after 6 weeks. As the action would amount to criminal contempt, proceedings be placed before the Hon'ble the Chief Justice for assigning the same to the appropriate Bench.

7. Chamber Summons is dismissed as withdrawn as prayed by the applicant through her Advocate.

8. Prothonotary and Sr.Master should register the complaint as aforesaid within two weeks from today.

9. Xerox copy of the Articles of Agreement dated 22nd September, 1993 produced by the plaintiff be

kept in sealed cover and preserved till further orders.